

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

GREENSPRINGS BAPTIST CHRISTIAN) Case No. 09-1054 SC
FELLOWSHIP TRUST,)
) ORDER TO SHOW CAUSE
Plaintiff,)
)
v.)
)
JAMES P. CILLEY, an individual;)
MARK A. SCHMUCK, an individual;)
and TEMMERMAN, CILLEY & KOHLMANN,)
LLP,)
)
Defendants.)
_____)

This Court previously granted Defendants' motion to strike the First Amended Complaint ("FAC") of Plaintiff Greensprings Baptist Christian Fellowship Trust ("Greensprings") pursuant to California's anti-SLAPP provision, California Code of Civil Procedure Section 425.16 ("§ 425.16"). Docket No. 60 ("Order"). As discussed in this Court's prior Order, Greensprings brought this suit for malicious prosecution against Robert Miller, Barbara Miller, and Anne Miller ("the Millers") and Attorney Defendants. See Compl., Docket No. 1. Greensprings claims that a previous suit brought by Attorney Defendants on behalf of the Millers, Miller v. Greensprings Baptist Christian Fellowship Trust, No. 07-4776 (N.D. Cal. removed Sept. 17, 2007) ("the Miller suit"), was filed

1 maliciously and without probable cause.¹ The Court concluded that
2 although the Miller Suit was brought, at least in part, without
3 probable cause, Greensprings failed to establish that either the
4 Millers or the Attorney Defendants had acted maliciously. Order at
5 26. This Court granted Greensprings leave to amend their
6 allegations to establish malice. Id. Greensprings has filed a
7 Second Amended Complaint, Docket No. 63, and Attorney Defendants
8 have appealed this Court's grant of leave to amend, Docket No. 71.
9 The appeal remains pending before the Ninth Circuit.

10 When Attorney Defendants filed their notice of appeal, they
11 did not request a stay of proceedings before this Court. Instead,
12 they filed a second Special Motion to Strike the Second Amended
13 Complaint, which is currently pending. Docket No. 76 ("Second
14 Motion"). "In general, filing of a notice of appeal confers
15 jurisdiction on the court of appeals and divests the district court
16 of control over those aspects of the case involved in the appeal."
17 Marrese v. Am. Academy of Orthopaedic Surgeons, 470 U.S. 373, 379
18 (1985). The matter being appealed -- whether it was proper for
19 this Court to allow Greensprings the opportunity to submit a Second
20 Amended Complaint -- is directly related to the issue immediately
21 before this Court -- whether that Second Amended Complaint may be
22 stricken under § 425.16. This Court therefore questions whether it
23 has jurisdiction to rule upon Attorney Defendants' Special Motion
24 at this time.

25 Even if jurisdiction exists, this Court has broad discretion
26 to stay proceedings pending the outcome of the appeal in order to

27 ¹ This Court has since entered a consent judgment between
28 Greensprings and the Millers. Docket No. 74. Attorney Defendants
are the only defendants remaining in this suit.

1 "promote economy of time and effort for itself, for counsel, and
2 for litigants." Filtrol Corp. v. Kelleher, 467 F.2d 242, 244 (9th
3 Cir. 1972) (quotations and citations omitted). Should the Ninth
4 Circuit conclude that Greensprings should not have been afforded
5 the opportunity to submit the Second Amended Complaint, then it
6 would be pointless for this Court to determine whether the Second
7 Amended Complaint must be stricken pursuant to § 405.16. Even if
8 this Court has jurisdiction to rule upon the Second Motion, the
9 Court would be inclined to stay proceedings, sua sponte, and to
10 dismiss the Second Motion with leave to refile, if necessary, after
11 the Ninth Circuit has reached a conclusion.

12 The Court will allow both parties an opportunity to address
13 this Court's concerns before it issues an order. Attorney
14 Defendants may submit a five-page brief no later than Thursday,
15 February 11, 2010. Greensprings may submit a five-page brief no
16 later than Wednesday, February 17, 2010.

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18 IT IS SO ORDERED.

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20 Dated: February 4, 2010

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UNITED STATES DISTRICT JUDGE
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